

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA**

IN RE:

TOMMY DEWAYNE DOBSON : CASE NO. 23-60148  
ANNE CHRISTINE DOBSON, : CHAPTER 11  
Debtors. : JUDGE REBECCA CONNELLY  
:

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**NOTICE OF HEARING ON  
DEBTORS' MOTION TO DISMISS  
THE OBJECTION OF THE UNITED STATES TRUSTEE  
TO THE DEBTORS' ELECTION TO PROCEED  
UNDER SUBCHAPTER V OF CHAPTER 11**

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**PLEASE TAKE NOTICE** that on March 30, 2023, TOMMY DEWAYNE DOBSON and ANNE CHRISTINE DOBSON (the "Debtors") filed the attached motion (the "Motion").

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion has been scheduled in the U.S. Bankruptcy Court for Western District of Virginia as follows:

Date & Time	Location
April 6, 2023 at 11:00 A.M.	The hearing is scheduled to be held by video. All parties connect using video conference instructions on the court website.  The parties may access the hearing using the following URL: <a href="https://vawb-uscourts-gov.zoomgov.com/j/1603692643">https://vawb-uscourts-gov.zoomgov.com/j/1603692643</a>  Alternatively, parties may log in to their Zoom account and join the meeting using Meeting ID number 160 369 2643

**PLEASE TAKE FURTHER NOTICE** that your rights may be affected. You should read the Motion carefully and discuss it with your attorney, if you have one in the Chapter 11 case. (If you do not have an attorney, you may wish to consult one).

Dated: March 30, 2023

Respectfully Submitted,

TOMMY DEWAYNE DOBSON  
ANNE CHRISTINE DOBSON  
By Counsel

By: /s/ David Cox

David Cox (VSB #38670)  
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434/845/2600  
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Proposed Counsel for the Debtor/Movant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed with the Court's CM/ECF system, causing this document to be sent through that system to all parties designated to receive same, and was also mailed on **March 31, 2023**, via first class mail to the parties on the attached Service List that will not receive a copy of the foregoing through the Court's CM/ECF system. I further emailed a copy of the foregoing to the following parties:

Office of the United States Trustee  
c/o W. Joel Charboneau  
*Joel.Charboneau@usdoj.gov*

William Callahan, Esq.  
Ch. 11 Subchapter V Trustee  
*callahan@gentrylocke.com*

**Dated: March 30, 2023**

**Respectfully Submitted,**

By: /s/ David Cox

David Cox, Counsel

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ALLIED CONCRETE COMPANY 1000 HARRIS STREET P.O. BOX 1647 CHARLOTTESVILLE, VA 22903	BROTHER2S CONSTRUCTION LLC 3703 LANCASTER RING RD. FREDERICKSBURG, VA 22408	FLAMELESS SPECIALTIES, INC. 512 BROOKWAY DRIVE CHARLOTTESVILLE, VA 22901	HOMESTEAD BUILDING SYSTEMS, INC. 10109 PIPER LANE BRISTOW, VA 20136
ALLIED PORTABLE TOILETS 1207 CROZET AVE. PO BOX 939 CROZET, VA 22932-3132	BROWNS HVAC LLC 2138 MARTIN KINGS ROAD SCOTTSVILLE, VA 24590	FLOOR CRAFT DESIGNS, MARK HEATWOLE 4752 DEEP CREEK ROAD KENTS STORE, VA 23084	HYDROGEO ENVIRONMENTAL, LLC 418 EAST MAIN STREET CHARLOTTESVILLE, VA 22902
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WITMER'S BOOM PUMPING LLC  
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WEYERS CAVE, VA 24486

WITMER'S CONCRETE PUMPING LLC  
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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA**

IN RE:

TOMMY DEWAYNE DOBSON : CASE NO. 23-60148  
ANNE CHRISTINE DOBSON, : CHAPTER 11  
Debtors. : JUDGE REBECCA CONNELLY

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**MOTION TO DISMISS  
THE OBJECTION OF THE UNITED STATES TRUSTEE  
TO THE DEBTORS' ELECTION TO PROCEED  
UNDER SUBCHAPTER V OF CHAPTER 11**

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Come now Tommy D. Dobson (“Mr. Dobson”) and Anne C. Dobson (“Mrs. Dobson”), the debtors and debtors-in-possession (collectively, the “Dobsons” or the “Debtors”), by counsel, and consistent with the directions of the Court and agreement of the parties at the prehearing conference call in this matter to set any dispositive motions for April 6, 2023, the Debtors file this, their *Motion to Dismiss the Objection of the United States Trustee to the Debtors’ Election to Proceed Under Subchapter V of Chapter 11* (the “Motion”), and in support thereof respectfully state as follows:

**I. PRELIMINARY STATEMENT**

Prior to the enactment of subchapter V of chapter 11 (“Subchapter V”), small business debtors had difficulty reorganizing in chapter 11 for a number of reasons, including chapter 11’s exorbitant administrative costs, hard to achieve confirmation requirements, and procedural hurdles throughout the confirmation process. Subchapter V has been almost universally welcomed as a mechanism to eliminate those obstacles to small business reorganizations while

also providing protection for small business debtors' creditors. 8 *Collier on Bankruptcy* ¶ 1180.01 (16th 2023).

The Dobsons, as self-employed individuals, are just the type of small business debtors for which Subchapter V was designed. The Dobsons have correctly and appropriately selected Subchapter V in order to reorganize their business and also provide a recovery for their creditors. The Dobsons are *not* the type of large business conglomerate trying to manipulate the eligibility requirements of Subchapter V through the use of affiliated entities in a way that the debt limitation rules were intended to prevent. As such, and respectfully, the US Trustee's Objection to the Dobsons' election to Subchapter V is misplaced from both a legal standpoint as well as from a policy perspective.

Accordingly, the Debtors seek, through this dispositive motion, to end the expense and distraction of defending continued litigation and responding to lengthy discovery at this critical time in the midst of the accelerated deadlines of Subchapter V when they should be communicating with their creditors and the Subchapter V Trustee and attempting to negotiate and craft a consensual plan for the good of all stakeholders. No one will benefit from the Dobsons being forced into a regular chapter 11 case – certainly not the creditors of the Dobsons who will also endure the loss of the assistance of the Subchapter V Trustee, the draining of estate resources to pay US Trustee fees, and the delays and expenses associated with disclosure statements and other formalities of chapter 11 not required in Subchapter V, including without limitation the potential of the appointment of an unsecured creditors' committee.

The Dobsons position is simple with respect to the Objection of the US Trustee: (a) The *petition date* controls the determination of eligibility for Subchapter V, (b) no post-petition

events cause a debtor to become ineligible for Subchapter V.<sup>1</sup> If the Court shares the Dobsons' interpretation of these legal issues, then the debts of Dobson Homes, Inc. ("DHI") are not included in the Dobsons' total debt calculations<sup>2</sup> for eligibility purposes under 11 U.S.C. 1182, and the US Trustee's Objection to the Dobsons' Subchapter V election must be overruled as a matter of law.

## **II. JURISDICTION AND VENUE**

1. Jurisdiction is proper pursuant to 28 U.S.C. §§ 157 and 1334, and the statutory predicates for this motion are §§ 101, 105(a) and 1182 of the Bankruptcy Code and Fed. R. Bankr. P. 1020.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

## **III. BACKGROUND**

4. The Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code on February 7, 2023. On their petition, the Debtors indicated their desire to proceed under Subchapter V. The Debtors' petition [Docket No. 1] is incorporated by reference.
5. The following day, on February 8, 2023, DHI, an "affiliate" of the Dobsons under 11 U.S.C. § 101(13), filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code.

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<sup>1</sup> In fact, no post-petition events cause a debtor to become ineligible for *any* chapter of the Bankruptcy Code for that matter, as discussed further in this Motion.

<sup>2</sup> The Dobsons dispute that the total noncontingent, liquidated debts would be over the limit of \$7.5 Million even if the debts of DHI were included in the total debt calculations for purposes of Subchapter V debtor eligibility under 11 U.S.C. 1182. However, such factual position is not before the Court.

#### **IV. BASIS FOR DISMISSAL OF US TRUSTEE'S OBJECTION**

##### **A. The Petition Date Controls the Determination of Eligibility for Subchapter V**

6. A chapter 11 bankruptcy is commenced by the filing of a petition. The date of filing of the petition becomes the “Petition Date.” In the case of the Dobsons, the Petition Date was February 7, 2023.

7. Fed. R. Bankr. P. 1020(a) provides that in a voluntary chapter 11, “the debtor shall state *in the petition* whether the debtor is a small business debtor and, if so, whether the debtor elects to have subchapter V of chapter 11 apply.” *Emphasis added*, Fed. R. Bankr. P. 1020(a). The Dobsons completed their Subchapter V election on the Petition Date by checking the appropriate box on their petition.

8. Fed. R. Bankr. P. 1020(a) further states that, “[t]he status of the case as a small business case or a case under subchapter V of chapter 11 shall be in accordance with the debtor’s statement under this subdivision, unless and until the court enters an order finding that the debtor’s statement is incorrect.”

9. As such, Fed. R. Bankr. P. 1020(a) contemplates the Subchapter V election being made *on the Petition Date*. The rule also requires the election to remain in place unless and until the Court deems it incorrect.

10. In order to be able to make that Subchapter V election on the Petition Date, the debtor must satisfy the requirements of 11 U.S.C. § 1182(1), to wit:

In this subchapter [11 USCS §§ 1181 et seq.]:

(1) Debtor. The term “debtor”—

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning single asset real estate) that has aggregate noncontingent

liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$7,500,000 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor; and

(B) does not include—

- (i) any member of a group of affiliated debtors under this title that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$7,500,000 (excluding debt owed to 1 or more affiliates or insiders);
- (ii) any debtor that is a corporation subject to the reporting requirements under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or
- (iii) any debtor that is an affiliate of a corporation described in clause (ii).

11 U.S.C.S. § 1182(1).

11. The first three words of subparagraph (A) indicates that it is “subject to subparagraph (B)....” Further, the two subparagraphs are joined by an “and.” Accordingly, the entirety of section 1182(1), including both subparagraphs A and B, is to be read as one.

12. Reading 11 U.S.C. § 1182(1)(A) and (B) as a whole, the effect of subparagraph B is that it modifies subparagraph A to include in the debt limitations of subparagraph A the debts of that debtor *and* the debts of any affiliate debtor. The timing of the debt calculation is *not* changed by subparagraph B – it remains *as of the petition date* as noted in subparagraph A.

13. Further the plain language requires only the inclusion of the debts of an affiliate *debtor* in the debt calculations. The definition of “debtor” throughout all of title 11 means a “person or municipality concerning which a case under this title *has been commenced*.” Emphasis added, 11 U.S.C. § 101(13) (“In this title the following definitions shall apply”).

14. In other words, the subparagraph is not requiring the inclusion of the debts of all affiliates. Only the debts of those affiliates who are *debtors*, that is, who have commenced a bankruptcy case, are included as part of the debt calculations for purposes of the debt limits of 11 U.S.C. § 1182(1). Put simply, an affiliate *debtor* must first, of course, be a *debtor*.

15. When the Dobson's case was filed, there was no affiliate that was a debtor – thus there are no additional debts to include in the determination of their debts for purposes of 11 U.S.C. § 1182(1). DHI's bankruptcy was not filed on the Petition Date of the Dobsons. It was, in fact, filed the following day.

16. In addition to the statutory language itself requiring that the debt limit and eligibility determination be made *as of the Petition Date*, such temporal limitation is wholly consistent with all other aspects of the Bankruptcy Code and all other chapters of the Bankruptcy Code.

17. For example, 11 U.S.C. § 109(e) provides that only an individual “that owes, on the date of the filing of the petition, debts of less . . .” is eligible to be a debtor under chapter 13. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975 (9th Cir. 2001) (Chapter 13 eligibility should normally be determined by a debtor's originally filed schedules, measured as of the petition date, checking only to see whether the schedules were filed in good faith.).

18. Likewise, 11 U.S.C. § 101(18) definition of a “Family Farmer” includes a number of considerations for purposes of chapter 12 eligibility that must be satisfied “on the date the case is filed.” 11 U.S.C.S. § 101(18).

19. In fact, in no chapter of the Bankruptcy Code does a post-petition event cause a debtor's loss of eligibility under that chapter's provisions.

20. Removal of the temporal limitations on determining eligibility is contrary to the fundamental purpose of Subchapter V which is intended to provide a streamlined, speedy and efficient bankruptcy process. In *In re Parking Mgmt., Inc.*, 620 B.R. 544 (Bankr. D. Md. 2020) the Court found the debtor eligible under Subchapter V despite the (i) existence of a prepetition PPP loan obligation and (ii) motions to reject 12 leases filed on the Petition Date. The Court determined that both obligations remained contingent and unliquidated on the Petition Date. The Court held that “[o]pening up eligibility determinations to post-petition events, even if deemed to apply retroactively, is contrary to the purpose and spirit of Subchapter V, and could nullify the very benefits it is intended to convey.” *Id.* at 554.

21. By contrast, under the view espoused by the US Trustee, a debtor might float in and out of Subchapter V during the term of its case depending on the post-petition decisions of separate entities. Such a result would be inconceivable by Congress and unworkable by the courts as a practical matter. See, *James v. W. (In re W.)*, 2017 Bankr. LEXIS 527, \*45 (Bankr. W.D. Mo. Feb. 24, 2017) (discussing the importance of considering debts as they exist as of the petition date, irrespective of postpetition events in the context of Chapter 13 eligibility).

22. For the foregoing reasons, the total noncontingent, liquidated debt of the Dobsons should be determined at the Petition Date and should not include any debts of DHI.

**B. The Dobson's Noncontingent Liquidated Debts Do Not Exceed \$7.5 Million**

23. Chapter 13 caselaw includes well developed concepts on determining debt limit eligibility questions that are instructive here. The general rule is that the amount and character of debt will be determined from the debtor's schedules, and proof beyond those documents is

considered only if there is evidence of bad faith by the debtor. Keith M. Lundin, LUNDIN ON CHAPTER 13, § 14.3, at ¶ 2, LundinOnChapter13.com (last visited March 30, 2023).

24. In the often-cited case, *Comprehensive Accounting Corp. v. Pearson (In re Pearson)*, the United States Court of Appeals for the Sixth Circuit explained why chapter 13 eligibility should normally be determined by the debtor's schedules checking only to see if the schedules were made in good faith. “The resources of the debtor are almost by definition limited and the means of determining eligibility must be efficient and inexpensive. To allow an extensive inquiry in each case would do much toward defeating the very object of the statute.” 773 F.2d 751, 757 (6th Cir. 1985).

25. The time-sensitivity of the courts in chapter 13 eligibility determinations are equally relevant in Subchapter V where the debtor must meet several important and short deadlines in order to reach confirmation of its plan.

26. In the Dobsons’ case, the US Trustee has alleged no bad faith in the preparation of their schedules.

27. The only concern with respect to the Dobsons’ schedules cited by the US Trustee in its Objection was the listing of the IRS and the Virginia Department of Taxation as *unknown* and *disputed* creditors. Below are the references to those creditors from the Dobsons’ Schedule E/F filed February 28, 2023.

	Total claim	Priority amount	Nonpriority amount
<b>2.1</b>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>Internal Revenue Service**</b> Priority Creditor's Name <b>P O Box 7346</b> Number Street	Last 4 digits of account number _____	When was the debt incurred? _____	
As of the date you file, the claim is: Check all that apply.			
<input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed			
Type of PRIORITY unsecured claim:			
<input type="checkbox"/> Domestic support obligations <input checked="" type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____			
<b>Who incurred the debt?</b> Check one.			
<input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input checked="" type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another			
<b>Check if this claim is for a community debt</b>			
<b>Is the claim subject to offset?</b>			
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

Debtor 1 **Tommy Dewayne Dobson**  
 Debtor 2 **Anne Christine Dobson**

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#### **Part 1: Your PRIORITY Unsecured Claims -- Continuation Page**

After listing any entries on this page, number them sequentially from the previous page.

	Total claim	Priority amount	Nonpriority amount
<b>2.2</b>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>Va Department Of Taxation*</b> Priority Creditor's Name <b>Attn: Bankruptcy</b> Number Street <b>P O Box 2156</b>	Last 4 digits of account number _____	When was the debt incurred? _____	
As of the date you file, the claim is: Check all that apply.			
<input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input checked="" type="checkbox"/> Disputed			
Type of PRIORITY unsecured claim:			
<input type="checkbox"/> Domestic support obligations <input checked="" type="checkbox"/> Taxes and certain other debts you owe the government <input type="checkbox"/> Claims for death or personal injury while you were intoxicated <input type="checkbox"/> Other. Specify _____			
<b>Who incurred the debt?</b> Check one.			
<input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input checked="" type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another			
<b>Check if this claim is for a community debt</b>			
<b>Is the claim subject to offset?</b>			
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes			

28. The IRS and Virginia Department of Taxation were, however, scheduled *properly* by the Dobsons. The Dobsons *did not owe* these taxing authorities any money on the Petition Date. In fact, these taxing authorities have not assessed the Dobsons personally with any tax liability. Yes, the Dobsons' company, DHI, owes certain employment taxes, but the Dobsons do not owe any such taxes now nor did they as of the Petition Date. The Dobsons' simply ensured

proper notice of their bankruptcy was provided to the taxing authorities in the event such tax or trust fund recovery penalty assessments were made against them post-petition. Such action is a best practice and not in any way evidence of bad faith.

29. There are no indicia that the Dobsons have not filed their schedules in good faith as alleged in the objection or that the Dobsons have not exercised due diligence in their preparation of the same.

30. As such, there is no basis to go beyond the face of the Dobsons' schedules which indicate their noncontingent, liquidated debts are just \$2,391,495.20 -- far less than the Subchapter V debt limitation of \$7,500,000.00.

## V. CONCLUSION

31. Like so many other legal questions in bankruptcy, Subchapter V eligibility is analyzed as a "snapshot" of the facts and circumstances in existence at the Petition Date.

32. The Dobsons qualified for and properly elected Subchapter V status when they filed their petition, and the subsequent chapter 7 filing of an affiliate does not impact their eligibility.

WHEREFORE, the Debtors respectfully pray that the Court enter an order: dismissing the US Trustee's Objection to their election to proceed under Subchapter V and granting any other appropriate relief.

**Dated: March 30, 2023**

**Respectfully Submitted,**

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**By Counsel**